Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
	)
AIR-TEL, LLC	)
IOU ACQUISITIONS, INC.	)
	)
Petition for Declaratory Ruling and Waiver	)

ORDER

Adopted: November 30, 2017 **Released: December 1, 2017**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* This *Order* addresses a Petition for Declaratory Ruling and Waiver filed by Air-Tel, LLC, (Air-Tel) and IOU Acquisitions, Inc. (IOU) (collectively, Petitioners).[1] Petitioners seek a declaratory ruling that the service they offer constitutes radiolocation under part 90 of the Commission's rules, and therefore may be provided under their licenses in the Radiolocation Service. They also request a waiver to permit them to provide that service in the 3500-3550 MHz band using equipment that has not been approved for radiolocation operation on those frequencies. As discussed below, we deny the Petition to the extent discussed herein, and conclude that Petitioners' service as provided does not constitute radiolocation. Consequently, we need not address the waiver request.

2. *Background.* Air-Tel and IOU are the licensees of, respectively, part 90 Radiolocation Stations WQLX454 and WQLW310, which authorize operation at various locations on spectrum in the 3300-3650 MHz bands.[2] The licenses authorize base and mobile radiolocation operations for the purpose of determining distance, direction, speed, or position, and use of a digital emission.[3] Petitioners, however, use the licensed facilities to provide fleet management services: the base stations send a signal to the mobile units, which respond by transmitting their geographic coordinates (determined by means of an embedded Global Positioning System (GPS) unit) back to the base station.[4]

3. Recently, the Commission's Enforcement Bureau questioned whether Petitioners'

[1] Petition of Air-Tel, LLC, and IOU Acquisitions, Inc., for Declaratory Ruling and Waiver (Oct. 30, 2017) (Petition).

[2] Station WQLX454 is authorized for 3300-3600 MHz, with locations in Arizona, Colorado, Florida, Idaho, and Utah. Station WQLW310 is authorized for 3300-3650 MHz, with a location in Colorado. The licenses initially were granted to Sage and Company, LLC, in 2010, *see* FCC File Nos. 0004184294 and 0004184297, which assigned them to IOU in 2014, *see* FCC File No. 0006461572, which assigned the license for Station WQLX454 to Air-Tel in 2016, *see* FCC File No. 0007307197.

[3] Specifically, Station WQLX454 is authorized for emission types D1D and X1D, and Station WQLW310 is authorized for emission type D1D. An emission designator describes an emission's characteristics. A minimum of three symbols is used to describe the basic characteristics of the radio emission. *See* 47 CFR § 2.201. The first symbol designates the type of modulation. The second symbol designates the nature of the signal modulating the main charrier. The third symbol designates the type of information to be transmitted. A D for the third symbol indicates the transmission of data, telemetry, and telecommand. 47 CFR § 90.207(a)(3).

[4] Petition at 3.

operations constitute radiolocation, and thus are authorized under Petitioners' licenses.[5] In response, Petitioners discontinued those operations and filed the Petition requesting a declaratory ruling that the transmission of GPS coordinates constitutes radiolocation.[6]

4. *Discussion.* Part 90 of the Commission's rules defines radiodetermination as "[t]he determination of position, or the obtaining of information relating to position, by means of the propagation of radio waves."[7] Radiolocation is radiodetermination for purposes other than radionavigation.[8] Petitioners argue that "the definition of radiolocation includes any technology that uses the propagation of radio waves to either determine the position of an object **or to** 'obtain . . . information relating to position,'" including the transmission of GPS coordinates.[9]

5. Under Petitioners' reading, any transmission—voice, data, or image—that provides information relating to an object's position constitutes radiolocation. This interpretation conflicts with the allocation of these bands, and both the plain language and intent of the rules governing radiolocation.[10] When the Commission intends to permit the transmission of data on radiolocation frequencies, it specifically provides for it. For example, the Commission previously distinguished the transmission of GPS coordinates from radiolocation when it added a maritime mobile allocation to the existing radiolocation allocation in the 1900-2000 kHz band in order to permit radio buoys that use GPS technology.[11] It explained, "Radio buoys traditionally have been operating under a radiolocation service allocation because their location is determined by the transmission of an omnidirectional signal that is used for radio direction finding. Radio buoys using GPS technology do not fall under this definition because their position is not determined by means of the propagation properties of radio waves."[12] Thus,

[5] *Id.* at 4.

[6] *Id.* at 4-5.

[7] *See* 47 CFR § 90.7.

[8] *Id.*; *see also* 47 CFR § 90.101 ("The Radiolocation Service accommodates the use of radio methods for determination of direction, distance, speed, or position for purposes other than navigation.").

[9] *See* Petition at 6-7.

[10] For example, Petitioners' reading would prohibit the transmission of voice or data regarding location by Specialized Mobile Radio systems, which are defined as "radio system[s] in which licensees provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz bands on a commercial basis to entities eligible to be licensed under this part, Federal Government entities, and individuals." *See* 47 CFR § 90.7.

[11] *See Amendment of Parts 2, 15, 80, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2012)(WRC-12), Other Allocation Issues, and Related Rule Updates*, Report and Order, 32 FCC Rcd 2703, 2714, para. 30 (2017).

[12] *See id.* at 2714, n.72 (citation omitted); *see also Amendment of Parts 1, 2, 15, 25, 27, 74, 78, 80, 87, 90, 97, and 101 of the Commission's Rules Regarding Implementation of the Final Acts of the World Radiocommunication Conference (Geneva, 2007) (WRC-07), Other Allocation Issues, and Related Rule Updates, et al.*, Report and Order, Order, and Notice of Proposed Rulemaking, 30 FCC Rcd 4183, 4226, n.345 (2015) ("Under the Commission's rules, radiodetermination is defined as the determination of the position, velocity, and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves and radiolocation is defined as radiodetermination used for purposes other than those of radionavigation. Radio direction-finding is defined as radiodetermination using the reception of radio waves for the purpose of determining the direction of a station or object. 47 C.F.R. § 2.1(c). While most radio buoys currently operate in the radiolocation service, some also transmit their GPS coordinates, and thus, the (continued….)

the transmission of GPS coordinates does not constitute radiolocation under the Commission's rules.

6. Notwithstanding that the licenses were granted for emission designators not ordinarily associated with radiolocation, Petitioners were never granted a waiver of the applicable service rules to permit them to provide non-radiolocation services under part 90 radiolocation licenses.[13] Indeed, the initial applications specifically stated that the licensee would provide radiolocation services.[14] Nor do Petitioners support their claim by identifying any other 3300-3650 MHz radiolocation licenses used for GPS tracking.[15]

7. *Conclusion.* We conclude that the transmission of GPS coordinates does not constitute radiolocation as the term is defined in the Commission's rules. Consequently, Petitioners' Radiolocation Service licenses do not authorize such operations. We therefore need not address Petitioners' request for a waiver to permit them to provide that service in the 3500-3550 MHz band using equipment that has not been approved for operation on those frequencies.

8. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.2 of the Commission's rules, 47 CFR § 1.2, that the Petition for Declaratory Ruling and Waiver filed by Air-Tel, LLC, and IOU Acquisitions, Inc., on October 30, 2017, IS DENIED IN PART and DISMISSED AS MOOT IN PART as set forth above.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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associated ship station does not necessarily use radio direction-finding to locate these radio buoys. Our proposal to allocate the 1900-2000 kHz band to the maritime mobile service would support the transmission of a radio buoy's GPS coordinates and other data, such as the identification number of the buoy and water temperature.").

[13] Moreover, some Commission rules specify digital emissions for radiolocation. *See* 47 CFR §§ 80.207(d), 87.131. Similarly, that the licenses were granted for base and mobile operations is not inconsistent with them being limited to radiolocation, for the Commission's rules recognize both radiolocation land stations and radiolocation mobile stations. *See* 47 CFR § 2.1.

[14] *See* FCC File Nos. 0004184294 ("Licensee will be engaged in providing commercial, industrial, and educational services determining distance, direction, speed, or position by means of radiolocation."), 0004184297 ("Licensee will be engaged in commercial, and industrial Radiolocation Services.").

[15] According to the Commission's Universal Licensing System, the other active 3300-3650 MHz radiolocation licenses are used for weather radar and surveillance radar.